

SERVED: March 25, 1993

NTSB Order No. EA-3829

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 8th day of March, 1993

JOSEPH DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Dockets SE-11216
)	SE-11219
)	
ERIC L. BJORN, and)	
MICHAEL LUCAS,)	
Respondents.)	
)	
)	

OPINION AND ORDER

Respondents have jointly appealed from the oral initial decision of Administrative Law Judge William R. Mullins, issued on December 18, 1990, following an evidentiary hearing.¹ The law judge affirmed orders of the Administrator suspending respondent Lucas' airline transport pilot certificate for 60 days, and respondent Bjorn's airline transport pilot certificate for 30

¹The initial decision, an excerpt from the hearing transcript, is attached.

days. Respondent Lucas was charged with violating 14 C.F.R. 91.75(a) and (b) and 91.9. Respondent Bjorn was charged with violating 14 C.F.R. 91.75(b) and 91.9.² We deny the appeal.

Respondents Bjorn and Lucas were flying first officer and non-flying pilot in command, respectively, of Continental Airlines' flight 126 from Houston, TX to New York, NY on March 15, 1989. The flight was issued a clearance to 23,000 feet (flight level 230), and that clearance was acknowledged. Respondent Lucas testified that he entered the clearance in the 737's mode control panel, per standard operating procedures. The autopilot was not being used. Tr. at 31.

Approximately 5 minutes later (Tr. at 18), the aircraft was queried by ATC regarding its altitude. Respondents testified that, when they looked at the altitude display in the flight director, they saw that it was dialed for 26,000 feet, and Lucas responded to ATC that the aircraft was cleared to 26,000 feet. Tr. at 19. Before the deviation was corrected, the aircraft had

²§ 91.75(a) and (b) (now 91.123(a) and (b)) provided, as pertinent:

(a) When an ATC [air traffic control] clearance has been obtained, no pilot in command may deviate from that clearance, except in an emergency, unless an amended clearance is obtained.

(b) Except in an emergency, no person may operate an aircraft contrary to an ATC instruction in an area in which air traffic control is exercised.

§ 91.9 (now 91.13) provided:

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

climbed to 24,900 feet.

The law judge rejected respondents' defense that they were entitled to rely on the proper functioning of this equipment, especially given their other, extensive cockpit duties. He concluded that this defense failed to reflect the high degree of care required of ATP-rated pilots. In addition, the law judge questioned whether an equipment malfunction really had occurred, or whether an incorrect clearance had been entered initially. Tr. at 102. He stated further:

But the bottom line for me in this case is that both pilots knew or should have known that the altitude was 230 and . . . even if it [the mode control panel] malfunctioned that day, it still did not absolve the pilots of their responsibility to monitor that specific instrument . . . to make sure that the information was accurate.

Id. at 104.³

To the extent that respondents claim reliance on equipment as an affirmative defense, we refer them to and incorporate by reference Administrator v. Baughman, NTSB Order EA-3563 (1992), reconsideration denied, NTSB Order EA-3640 (1992), and Administrator v. Frederick, NTSB Order EA-3600 (1992), reconsideration denied, NTSB Order EA-3676 (1992). These two cases raised numerous issues regarding this same equipment fault, albeit in a slightly different context.⁴

³The law judge granted the Administrator's motion to waive sanction pursuant to the Aviation Safety Reporting Program.

⁴In those cases, respondents had engaged the autopilot. Nevertheless, it is the same piece of equipment, and the same fault: the display had the capacity to reset itself with no warning.

Most compelling in this case, apropos of the law judge's conclusions, is the issuance of Training Bulletin No. 88-75 (Exhibit A-5; see also Tr. at 33 and 48). The bulletin indicates distribution to all 737-300 pilots 5 1/2 months prior to this incident. Respondents did not exercise the highest degree of care when they relied solely on equipment to ensure their compliance with clearances when a training bulletin had alerted pilots to the equipment's malfunction potential.

Respondents' explanation that the press of other duties legitimately excused the deviation is no more convincing here than it was in the two prior cases. Indeed, the evidence does not demonstrate that respondents had other than routine cockpit duties.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondents' appeal is denied;
2. The 30- and 60-day suspensions of respondents' airline transport pilot certificates shall begin 30 days from the date of service of this order.⁵

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.
